

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED

U.S. DISTRICT COURT
NEW MEXICO
JUL 28 2000

SONIA L. SABATH,

00 JUL 28 PM 1:21

Plaintiff,

vs.

No. CIV 99-621 MV/KM

LOVELACE HEALTH SYSTEMS,
INC.,

Defendant.

**PLAINTIFF'S MEMORANDUM IN OPPOSITION
TO DEFENDANT'S MOTION TO DISMISS AND FOR SANCTIONS**

Plaintiff Sonia Sabath, by and through counsel of record, Hannah Best & Associates, hereby submits her Memorandum in Response to Defendant's Motion to Dismiss and for Sanctions. Plaintiff asks the Court to deny Defendant's Motion, and as grounds therefore, states:

INTRODUCTION

Plaintiff Sonia Sabath filed her Second Amended Complaint on June 6, 2000. The Second Amended Complaint differed from the First Amended Complaint only in that it sought to correct a failure to name the correct party.

In her Second Amended Complaint, Plaintiff Sabath asserts the following causes of actions: 1) Age discrimination, in violation of the Age Discrimination in Employment Act (hereinafter the "ADEA"), 29 U.S.C. Section 621, *et seq.*; 2) Retaliation after Protected Activity under the ADEA; 3) Retaliation for Protected Activity under Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*; 4) Abusive Discharge/Public Policy

under New Mexico state law; and 5) Discrimination based on Disability/Failure to Accommodate under the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*

At no time did Sonia Sabath sign an agreement to arbitrate all state and federal claims under the FAA, or otherwise. Ms. Sabath has no other binding agreement to arbitrate her claims with Defendant.

Plaintiff, in her pro se Complaint, and her counsel, in the First and Second Amended Complaints, stated claims based on existing law, or on a non-frivolous argument for extension or reversal of existing law.

FACTS

Plaintiff is a former employee of Defendant, and worked for Defendant for almost 30 years, from 1969 until December of 1997. Plaintiff worked as a Clinical Laboratorian at the time of her discharge. On or about October 1, 1998, within 300 days of her discharge, Plaintiff filed a charge of discrimination with the EEOC, for discrimination on the basis of age and retaliation, under both the ADEA and the ADA. *Exhibit A, Charge of Discrimination.* Plaintiff had earlier filed a charge based on failure to accommodate under the ADA. Plaintiff received a right-to sue letter on or about March 6, 1999, and timely filed her original complaint within 90 days of receipt of the right-to-sue letter. *Exhibit B, Letter of Right to Sue.*

In 1996, Defendant instituted a policy favoring arbitration of claims. Plaintiff did not agree individually or sign a contract individually that she would arbitrate her claims. Plaintiff submitted her ADA and ADEA claims to arbitration in January of 1998, but did

agree that in doing so, she waived her right to pursue these claims before the EEOC or in court. The issues involved in a wrongful discharge or public policy discharge claim were not considered by the arbitrator.

ARGUMENT

I. PLAINTIFF HAS NOT COMMITTED A VIOLATION COVERED BY RULE 11 OF THE FEDERAL RULES OF CIVIL PROCEDURE.

Rule 11 of the Federal Rules of Civil Procedure provides that by the signing of a legal pleading, an attorney is certifying that to the best of the person's knowledge and after reasonable inquiry that 1) the claim is not being made for an improper purpose; 2) the claims or contentions are either warranted by existing law, or by a nonfrivolous argument for an extension, modification or reversal of existing law or the establishment of new law; 3) the factual allegations contained in the pleading have evidentiary support; and 4) the denials contained are warranted by the evidence or are reasonably based on a lack of information.

Plaintiff has committed no such violation. There is no evidence that the claims presented by Plaintiff were presented due to any intention to harass, and there has been no allegation that factual contentions or denials were made without evidentiary support. Defendants claims are that the legal basis of Plaintiff's lawsuit was neither warranted by existing law or a nonfrivolous argument for an extension or modification of existing law, or a reversal of existing law or the establishment of new law. *Federal Rules of Civil Procedure, Rule 11.*

A. The Area Of Enforceability Of Arbitration Agreements Is A Rapidly Changing And Unclear Area of The Law.

The Supreme Court decision in *Gilmer v. Interstate Johnson Lane Corp.*, 500 U.S. 20, 111 S.Ct. 1647 (1991), which enforced a mandatory arbitration clause in an ADEA claim has given rise to substantial litigation regarding the use and enforceability of arbitration agreements in the employment context.

Since that time, it has been unclear where arbitration clauses will and will not be enforceable. The Tenth Circuit has refused to enforce arbitration in collective bargaining agreements, reasoning that such agreements were not bargained for individually, and should not be enforced individually on union members. *Harrison v. Eddy Potash, Inc.*, 112 F.3d 1437 (10th Cir. 1997). In this case, the Defendant failed to show that Plaintiff has signed an agreement to subject any and all claims to mandatory arbitration, and that, more importantly, she had agreed that such arbitration would waive her right to proceed to federal court and to a trial by jury.

At the time Plaintiff went through Defendant's internal grievance procedure, up to and including arbitration, she was also pursuing her claims before the EEOC. *Exhibit A, Charge of Discrimination*. When Plaintiff received a right-to-sue letter, she filed her original complaint within 90 days, in order to avoid the running of a statute of limitation. *Exhibit B, Right-to-Sue Letter.*

Because of the short statute of limitations involved in federal discrimination claims, only 90 days, Plaintiff did not have the luxury of extended negotiations with Defendants, but was forced to file a pleading in order to prevent the statute from running.

**B. Plaintiff Has Made Non-Frivolous Arguments Either Under Existing Law
Or For Extension of Existing Law.**

Plaintiff presented a number of good faith arguments in her Response to the Motion to Dismiss on Grounds of Claim Preclusion (Res Judicata) or, alternatively, For Failure to Comply with the Federal Arbitration Act. Plaintiff argued that she did not sign an arbitration agreement with Defendant, and that she therefore did not waive her rights to pursue her claims in court. Plaintiff further argues that she did not pursue her state court claim for abusive discharge in arbitration, and that this claim is not covered by the Federal Arbitration Act. Plaintiff finally argues that her claims, which were not pursued in court previously, cannot be barred under a doctrine of res judicata, or claim preclusion.

In her Memorandum in Opposition, Plaintiff argues makes non-frivolous arguments either under existing law, or for an extension of existing law.

WHEREFORE, Plaintiff asks this Court to deny Defendant's Motion to Dismiss and For Sanctions, and for any other and further relief this Court deems just and proper.

Respectfully submitted,

HANNAH BEST & ASSOCIATES

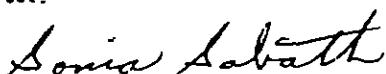
By: 
HANNAH B. BEST
GAIL A. HEGLUND
Attorneys for Plaintiff
1003 Luna Circle NW
Albuquerque, NM 87102
(505) 247-2727

CERTIFICATE OF SERVICE

I hereby swear that a copy of the foregoing pleading was faxed and mailed to opposing counsel of record, Lorna Wiggins and Marianne B. Bill, 20 First Plaza, Suite 710, P.O. Box 1308, Albuquerque, NM 87102, this 17th day of July, 2000.



GAIL A. HEGLUND
HANNAH B. BEST

CHARGE OF DISCRIMINATION		AGENCY	CHARGE NUMBER
<small>This form is affected by the Privacy Act of 1974; See Privacy Act Statement before completing this form.</small>		<input type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC	390990004
<u>NM Human Rights Division</u> <small>State or local Agency, if any</small>		and EEOC	
NAME (Indicate Mr., Ms., Mrs.) Ms. Sonia Sabath		HOME TELEPHONE (Include Area Code) (505) 255-8233	
STREET ADDRESS 909 Truman N.E., Albuquerque, NM 87110		CITY, STATE AND ZIP CODE DATE OF BIRTH 07/30/38	
NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)			
NAME Lovelace Health Systems		NUMBER OF EMPLOYEES, MEMBERS Cat U (Unknown)	TELEPHONE (Include Area Code) (505) 262-7000
STREET ADDRESS 5400 Gibson S.E., Albuquerque, NM 87108		CITY, STATE AND ZIP CODE COUNTY 001	
NAME 		TELEPHONE NUMBER (Include Area Code)	
STREET ADDRESS 		CITY, STATE AND ZIP CODE COUNTY	
CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es))		DATE DISCRIMINATION TOOK PLACE EARLIEST LATEST 12/08/97 12/08/97 <input type="checkbox"/> CONTINUING ACTION	
THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):			
<p>I. Statement of Personal Harm: a) On December 8, 1997, I was discharged from employment. I had been employed since 1969 and was classified as a Clinical Laboratorian 2 when discharged. b) I was denied appropriate cross-training to perform my job duties after the department was reorganized in January 1997.</p> <p>II. Respondent's Act, Policy, or Practice allegedly resulting in Discrimination: a) The Lab Administrator discharged me because I was allegedly unable to perform the essential job duties. I had been in the same job for (29) years and had been performing satisfactorily until the decision was made to combine two sections in the Laboratory. I was discharged not long after I was notified by Respondent that the results of the neuropsychological evaluation which I underwent showed that I allegedly did not have a disability. b) I successfully completed approx. 80 % of the subject matter in spite of the inadequate training and the stressful work environment that I was subjected to by person(s) who supervised me. I was terminated after almost (30) yrs. of service. I was eligible for early retirement but had no intentions to retire until age (65) or later.</p> <p>I believe that the decision to discharge me was motivated by an intent to retaliate for requesting reasonable accommodation, and because I had</p> <p>** Text Continued on Attached Sheet(s) **</p>			
<input type="checkbox"/> I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or telephone number and cooperate fully with them in the processing of my charge in accordance with their procedures.		NOTARY - (When necessary for State and Local Requirements) <small>I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.</small>	
I declare under penalty of perjury that the foregoing is true and correct.		SIGNATURE OF COMPLAINANT 	
Date <u>10/11/98</u> <small>EEOC FORM 5 (Rev. 06/92)</small>		EXHIBIT A <small>AND SWORN TO BEFORE ME THIS DATE <small>10</small> <small>Year)</small></small>	

Oct 01 10:50 1998 CP Initials AS Chg # 390990004, Attachment Page 1

Equal Employment Opportunity Commission
Form 5 - Charge of Discrimination, Additional Text

filed with EEOC.

III. Statement of Discrimination: I believe that I was discriminated against on the basis of my age, 59, and in retaliation for the filing of my initial charge with the EEOC, which constitutes a violation of the ADEA of 1967, as amended, and the Americans with Disabilities Act.

AS
10/1/98

RECEIVED

SEP 3 11 1998

DIS
MAY 11 1998
FBI - MEMPHIS

ADR

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NM Human Rights Division
Aspen Plaza
1596 Pacheco Street
Santa Fe, NM 87502

DATE 10/02/98
EEOC CHARGE 390990004
FEPAC DATE 10/0 RET -5 PM 2:07
FEPAC CHARGE _____

HUMAN RIGHTS DIVISION

SUBJECT: CHARGE TRANSMITTAL

Sabath, Sonia (Charging Party) v. Lovelace Health Systems (Respondent)

Transmitted herewith is a charge of employment discrimination initially received by the:

EEOC 10/01/98 (Name of FEPA) (Date of Receipt)

Pursuant to the worksharing agreement, this charge is to be initially investigated by the EEOC.

Pursuant to the worksharing agreement, this charge is to be initially investigated by the FEPA.

The worksharing agreement does not determine which agency is to initially investigate the charge.

EEOC requests a waiver FEPA waives

No waiver requested FEPA will investigate the charge initially

Please complete the bottom portion of this form to acknowledge receipt of the charge and, where appropriate, to indicate whether the Agency will initially investigate the charge.

TYPED NAME OF EEOC OR FEPA DIRECTOR

SIGNATURE

Frank L. Iske, Deputy Director

Frank L. Iske

Sabath, Sonia (Charging Party) v. Lovelace Health Systems (Respondent)

To whom it may concern:

- This will acknowledge receipt of the referenced charge and indicate this Agency's intention to initially investigate the charge
- This will acknowledge receipt of the referenced charge and indicate this Agency's intention not to initially investigate the charge
- This will acknowledge receipt of the referenced charge and request a waiver of initial investigation by the receiving agency.
- This will acknowledge receipt of the referenced charge and indicate this agency's intention to dismiss/close/not docket the charge for the following reason:

Non-jurisdictional beyond 180 day statutory time limit

TYPED NAME OF EEOC OR FEPA DIRECTOR

SIGNATURE

Richard Galaz

*Richard A. Baly*DATE 10/15/98

TO: Equal Employment Opportunity Comm.
505 Marquette N.W., Suite 900

EEOC CHARGE 390990004

Albuquerque, NM 87102

FEPA CHARGE _____

STATE OF NEW MEXICOCASE NAME Sabath vs Lovelace HCITY/COUNTY OF Albuquerque/BernalilloCASE NUMBER 390990004**AFFIDAVIT**

I, Sonia Sabath
 (Name) being first duly sworn upon my oath affirm and hereby say:

I have been given assurances by an Agent of the U.S. Equal Employment Opportunity Commission that this Affidavit will be considered confidential by the United States Government and will not be disclosed as long as the case remains open unless it becomes necessary for the Government to produce the affidavit in a formal proceeding. Upon the closing of this case, the Affidavit may be subject to disclosure in accordance with Agency policy.

I am 60 years of age, my gender is Female (sex) and my racial identity is White (race).

I reside at 909 Truman N.E. (Number/Street)

City of Albuquerque, County of Bernalillo,

State of NM, Zip Code 87110.

My telephone number is (including area code) (505) 255-8233.

My statement concerns Lovelace Health Systems (Name of Union/Company/Agency) which is located at 5400 Gibson S.E. (Number/Street)

in Albuquerque (City) NM (State) 87108 (Zip)

My job classification is (if applicable) Clin. Laboratorian 2 (job title)

My immediate supervisor is (if applicable) Tammi McMahon, Supervisor (Name) (job title)

I was employed by Respondent as a Medical Tech. from 1969 until December 8, 1997, when I was discharged from employment because I was allegedly unable to perform the essential job duties I was discharged by Dan Grecek, Lab Administrator, in the presence of the Dir. Of HR, Carol Shelton.

All of my performance evaluations previous to termination had been satisfactory or better. As recently as 1996, I received an excellent evaluation. In 1997, I was presented with an unsatisfactory evaluation. My alleged performance problems started when the decision was made to combine (2) sections in the Lab. I was the only employee in the group who did not have formal training. The other employees were either Med. Tech's or Med. Lab. Technicians. I passed approx. 80% of the cross training. There were only two areas which I did not pass. Both of these areas involved subjective decision making. Furthermore, the cross training that I received in these areas was inadequate, and inconsistent. I received approx. (10) different subjective explanations from different trainors in the urinalysis area. I was the only Chem. Specialist in the Lab. The majority of employees in the Lab were under (40) yrs. of age.

X (initials) Page 1 of 2

STATE OF NEW MEXICO
CITY/COUNTY OF Albuquerque/Bernalillo

CASE NAME Sabath vs Lovelace H
CASE NUMBER 390990004

AFFIDAVIT (cont.)

Respondent officials were aware that I had a visual impairment, and severe job related stress which was adversely affecting my ability to learn the subjective areas of my job. The stress was aggravated by supervisory officials who set up meetings and other situations, usually including threats of termination, before and during my cross-training making it significantly more difficult, or less likely for me to successfully learn all areas--especially the more difficult subjective ones.

I was discharged after completion of almost (30) yrs. of service. I had no intentions to retire until age 65 or later.

I went on a two week vacation in 10/97. I was then placed on administrative leave while I underwent a neuro-psychological evaluation for cognitive disorders. The results of the evaluation which was authorized by Respondent indicated that I do not have a permanent disability, and therefore, do not qualify for a reasonable accommodation.

I believe that the fact that I filed a previous charge against Respondent requesting reasonable accommodation was instrumental in the decision to terminate me.

Because of the aforesated, I believe that I was discriminated against on the basis of my age, 59, which constitutes a violation of the ADEA of 1967, as amended, and in retaliation for filing a previous charge with the EEOC, and in retaliation for asserting my right to reasonable accommodation, which constitutes a violation of the Americans with Disabilities Act.

I have read and had an opportunity to correct this Affidavit consisting of 2 handwritten typed 1 pages and swear that these facts are true and correct to the best of my knowledge and belief.

X Sonia Sabath

Subscribed and sworn to before me
this 01 day of October 1998

Rita Montoya, Fed. Inv. /EEOC

Walk-In at 1605 INTAKE C CER: R.D.M.
390971020 DATE: 8/11/98

ALBUQUERQUE DISTRICT OFFICE INTAKE QUESTIONNAIRE

THE FOLLOWING INFORMATION IS REQUESTED TO HELP US PROVIDE TIMELY CUSTOMER SERVICE TO YOU.
 IF YOU NEED ASSISTANCE IN COMPLETING THIS FORM, PLEASE NOTIFY THE RECEPTIONIST IMMEDIATELY.

YOUR NAME: Sonia Sabath TODAY'S DATE: 8-11-98
 ADDRESS: 909 Truman NE PHONE NUMBER: 255 8233
 CITY: ALB STATE: NM ZIP: 87110 COUNTY: BERN.
 DATE OF BIRTH: 7-30-38 SEX: M SOCIAL SECURITY NUMBER: 525 82 6671

Date Employment Began: 1969 Position Title: MED TECH.

PLEASE PROVIDE THE NAME, ADDRESS, AND TELEPHONE NUMBER OF A PERSON WHO CAN ALWAYS CONTACT YOU.
 NAME: Ernest Sabath RELATIONSHIP: FATHER TELEPHONE: 255 8253
 ADDRESS: Same as above STATE: _____ ZIP: _____

NAME OF EMPLOYER/UNION/EMPLOYMENT AGENCY YOU BELIEVE DISCRIMINATED AGAINST YOU:

NAME: Lovelace HR/PERSONNEL MGR's NAME: Carol Shelton
 ADDRESS WHERE YOU APPLIED/WERE EMPLOYED: 5400 GILSON SE ALB NM 87108
 STREET ADDRESS CITY STATE ZIP CODE
 TELEPHONE NUMBER: 262 7000 SUPERVISOR's NAME: Tami McMahon
DAVID SMITH
 DOES THIS EMPLOYER HAVE MORE THAN 15 EMPLOYEES TOTAL?: ✓ YES NO
 MOST RECENT DATE YOU BELIEVE YOU WERE HARMED: 12-8-97

UNDER WHICH OF THE FOLLOWING BASIS DO YOU BELIEVE YOU WERE DISCRIMINATED AGAINST?:

RACE NATIONAL ORIGIN SEX AGE DISABILITY RELIGION

RETALIATION (For having opposed to, complained of, or participating in a complaint of discrimination)

ON WHICH OF THE ISSUES BELOW DO YOU FEEL YOU HAVE BEEN DISCRIMINATED AGAINST?:

DENIED HIRE DENIED PROMOTION DISCIPLINED TERMINATED HARASSMENT
 SEXUAL HARASSMENT DENIED ACCOMMODATION (DISABILITY OR RELIGION) OTHER

HAVE YOU COMMUNICATED WITH THE NEW MEXICO HUMAN RIGHTS DIVISION ON THIS MATTER? No

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

NM Human Rights Division
Aspen Plaza
1596 Pacheco Street
Santa Fe, NM 87502

DATE 10/02/98EEOC CHARGE 390990004

FEPA CHARGE _____

SUBJECT: CHARGE TRANSMITTAL

Sabath, Sonia _____ v. Lovelace Health Systems _____
(Charging Party) (Respondent)

Transmitted herewith is a charge of employment discrimination initially received by the:

EEOC _____ on 10/01/98
(Name of FEPA) (Date of Receipt)

Pursuant to the worksharing agreement, this charge is to be initially investigated by the EEOC.

Pursuant to the worksharing agreement, this charge is to be initially investigated by the FEPA.

The worksharing agreement does not determine which agency is to initially investigate the charge.

EEOC requests a waiver FEPA waives

No waiver requested FEPA will investigate the charge initially

Please complete the bottom portion of this form to acknowledge receipt of the charge and, where appropriate, to indicate whether the Agency will initially investigate the charge.

TYPED NAME OF EEOC OR FEPA DIRECTOR

SIGNATURE

Frank L. Iske, Deputy Director

Sabath, Sonia _____ v. Lovelace Health Systems _____
(Charging Party) (Respondent)

To whom it may concern:

- This will acknowledge receipt of the referenced charge and indicate this Agency's intention to initially investigate the charge
- This will acknowledge receipt of the referenced charge and indicate this Agency's intention not to initially investigate the charge
- This will acknowledge receipt of the referenced charge and request a waiver of initial investigation by the receiving agency.
- This will acknowledge receipt of the referenced charge and indicate this agency's intention to dismiss/close/not docket the charge for the following reason:

TYPED NAME OF EEOC OR FEPA DIRECTOR

SIGNATURE

Richard Galaz

DATE _____

TO: Equal Employment Opportunity Comm.
505 Marquette N.W., Suite 900

EEOC CHARGE 390990004

Albuquerque, NM 87102

FEPA CHARGE _____

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Ms. Carol S Shelton
Director Of Human Resources
Lovelace Medical Center
1250 Ortiz Dr. S.E.
Albuquerque, NM 87108

ON FILING CHARGE	
Sabath, Sonia	
THIS PERSON (check one)	
<input checked="" type="checkbox"/> CLAIMS TO BE AGRIEVED <input type="checkbox"/> IS FILING ON BEHALF OF ANOTHER	
DATE OF ALLEGED VIOLATION	
Earliest	Most Recent
12/08/97	12/08/97
PLACE OF ALLEGED VIOLATION	
Albuquerque, NM	
CHARGE NUMBER	
390990004	

NOTICE OF CHARGE OF DISCRIMINATION

(See EEOC "Rules and Regulations" before completing this Form)

You are hereby notified that a charge of employment discrimination has been filed against your organization under:

- TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

THE AMERICANS WITH DISABILITIES ACT

THE EQUAL PAY ACT (29 U.S.C., SECT. 206(d)) investigation will be conducted concurrently with our investigation of this charge.

The boxes checked below apply to your organization:

1. No action is required on your part at this time.
 2. Please submit by 10/30/98 a statement of your position with respect to the allegation(s) contained in this charge, with copies of any supporting documentation. This material will be made a part of the file and will be considered at the time that we investigate this charge. Your prompt response to this request will make it easier to conduct and conclude our investigation of this charge.
 3. Please respond fully by 10/30/98 to the attached request for information which pertains to the allegations contained in this charge. Such information will be made a part of the file and will be considered by the Commission during the course of its investigation of the charge.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Equal Employment Opportunity Comm.
505 Marquette N.W., Suite 900
Albuquerque, NM 87102

Rita Montoya, Fed. Investigator
(Commission Representative)

(505) 248-5226

(Telephone Number)

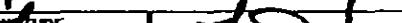
Enclosure: Copy of Charge

BASIS OF DISCRIMINATION

- RACE COLOR SEX RELIGION NAT. ORIGIN AGE DISABILITY RETALIATION OTHER

CIRCUMSTANCES OF ALLEGED VIOLATION

See enclosed Form 5, Charge of Discrimination.

DATE	TYPED NAME/TITLE OF AUTHORIZED EEOC OFFICIAL	SIGNATURE
10/02/98	Frank L. Iske, Deputy Director	
EEOC FORM 131 (Rev. 06/92)		FILE COPY

U.S. EQUAL OPPORTUNITY COMMISSION

DISMISSAL AND NOTICE OF RIGHTS

To: Sonia Sabath
909 Truman N.E.
Albuquerque, New Mexico 87110

From: U.S. Equal Employment Opportunity Commission
505 Marquette N.W. - Suite 900
Albuquerque, NM 87102-2189

On behalf of person(s) aggrieved whose identity is
 CONFIDENTIAL (29 CFR § 1601.7(a))

Charge No.	EEOC Representative	Telephone No
390990004	Rita Montoya, Federal Investigator	(505) 248-5226

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

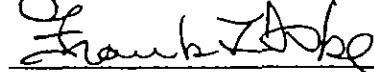
- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability that is covered by the Americans with Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- We cannot investigate your charge because it was not filed within the time limit required by law.
- Having been given 30 days in which to respond, you failed to provide information, failed to appear or be available for interviews/conferences, or otherwise failed to cooperate to the extent that it was not possible to resolve your charge.
- While reasonable efforts were made to locate you, we were not able to do so.
- You had 30 days to accept a reasonable settlement offer that afford full relief for the harm you alleged.
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.
- Other (briefly state): _____

- NOTICE OF SUIT RIGHTS -
(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit must be filed **WITHIN 90 DAYS** from your receipt of this Notice; otherwise, your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

On behalf of the Commission


 Frank L. Iske, Deputy Director

MAR 3 1999

(Date Mailed)

closure(s)

cc: Christine L. Ciarrocchi, Legal Counsel, CIGNA
Two Liberty Place, 48th Floor, 1601 Chestnut Street, Philadelphia, PA 19103

Steve Sanders, Attorney at Law
820 2nd St. NW, Alb., NM 87102

